



Division of Environment
Bureau of Environmental Field Services

ENVIRONMENTAL BENEFIT STATEMENT

Pursuant to K.S.A. 77-416, and amendments hereto

**PROPOSED AMENDMENT TO LIVESTOCK WASTE MANAGEMENT REGULATIONS:
K.A.R. 28-18-4 and K.A.R. 28-18a-4**

April 2021

Executive Summary of Amended Regulations

K.S.A. 65-171d authorizes the Secretary of the Kansas Department of Health and Environment to make rules and regulations to protect the soil and waters of the state from pollution and adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act.

The Livestock Waste Management Program is based upon statutes and regulations addressing general water pollution and specific statutes and regulations addressing water pollution from confined feeding facilities. Kansas statutes establishing requirements for confined feeding facilities were created in the late 1960's. In the 1990's the statutes and regulations underwent significant revisions primarily addressing location requirements and swine feeding operations. The statutes divided the requirements into portions specific to swine and other portions applying to all other confined feeding operations.

The Kansas statutes and regulations require a water pollution control permit if a facility 1) has a significant potential to pollute ~~rivers and streams~~ surface waters or groundwater of the state, or 2) contains or stores wastewater, or 3) required by the US EPA, generally if the capacity of the facility or feedlot is over 1,000 animal units (the term animal unit is defined in statute, K.S.A. 65-1 71d.).

These proposed amended regulations reflect modifications developed with stakeholder input will provide greater certainty to the regulated community in determining facility boundaries. The modifications do not directly provide any environmental benefit.

28-18-4 and 28-18a-4. Filing of applications and payment of fees.

These modifications reflect proposed amendments to the contents of permit applications for confined feeding facilities in order address current program requirements. The modifications do not directly provide any environmental benefit.

Amendments to both regulations clarify permit application filing requirements for owners of multiple confined feeding facilities and requires the signatory to meet federal requirements.

The clarification of permitting requirements will not alter existing habitable structure separation distances, nor separation distances to ground water or surface waters. However, the clarification may require current permitted confined feeding facilities to combine with other permitted confined feeding facilities if the two facilities share any part of the current waste management system.

I. Environmental Benefit Statement

1) Need for proposed amendments and environmental benefit likely to accrue.

a) Need.

Due to judicial findings of Case No. 2018-CV-000465 - Sierra Club vs. KDHE and the court reversing the agency actions of granting separate permits to adjacent swine feeding facilities in Phillips County and Norton County, the proposed amendments to the State regulations provide a more prescriptive description of what shall be considered as one confined feeding facility versus separate single facilities, and focuses on the separateness of animal waste management systems.

The proposed changes optimize the application and permitting process for determining whether multiple operations should be permitted as separate confined feeding facilities or as a single confined feeding facility as authorized by statute. Industry groups indicated that a more prescriptive definition of separate and single facilities that focused on the separateness of waste management systems maximized environmental benefits, while providing industry a predictable permitting process.

b) Environmental benefit

The environmental benefit of the proposed amended regulations provides a clear description of when adjacent confined feeding facilities, or two or more physically unconnected confined feeding facilities that utilize the same animal waste management system, are considered as one confined feeding facility for permitting requirements. The permitting requirements implement required set-back limits of a confined feeding facility from habitable structures, public and private water wells, and surface waters according to the animal unit capacity of the confined feeding facility.

2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.

This section is not applicable.

3) If specific contaminants are to be controlled by the proposed regulations or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.

This section is not applicable.